IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6635 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISLAMIC STUDY CENTRE & 1 - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MTM HAKIM for Petitioner(s) : 1,DELETED for Petitioner(s) : 2,
MR MR MENGDEY, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/03/2007

ORAL JUDGMENT

1. The petitioner no.1 is a public trust registered under the Bombay Public Trust Act and the said trust manages minority educational institution.

The institution in question is a religious minority institution imparting education in ITI courses.

2. The petitioners seek declaration that they are entitled to admit minority students in various courses run by the petitioners including ITI trade upto a maximum of 50% students from their own community. The prayer of the petitioners is also that the Commissioner of Employment and Training, Gandhinagar should not insist on admission of students as per the computerized merit list prepared by the Central Admission Committee of the State Government for the students which the petitioners want to admit in the 50% quota in minority students.

3. By an interim order dated 2/9/1999, Learned Single Judge of this Court granted interim relief in terms of paragraph 4(C) of the petition with a clarification and condition that 50% of the seats shall be filled in on the basis of the open merit as per the centralized admission process, as contemplated by the Commissioner for employment and Training, the remaining 50% seats shall be filled in by the petitioners from amongst the Muslims strictly on the basis of the merit inter se amongst the Muslim students. After granting the admissions in the 50%seats reserved for Muslim students, the petitioners shall submit the details of the

students admitted to the said quota along with the details of their names, marks and addresses.

4. In paragraph 4(c), the petitioners have prayed for interim injunction restraining the respondents from requiring the petitioners to operate computerized merit list for 50% seats on which the petitioners wish to admit minority students. In essence, therefore, this Court granted injunction against filling up of 50% seats from the merit list prepared by the Government authority and permitted the petitioners to admit minority students of-course subject to the above mentioned conditions.

5. During the pendency of this petition, this interim order continued and I am informed that the admissions are being granted in the said institutions by the respondents as per this formula.

6. Learned advocate Shri Hakim for the petitioners submitted that the petitioners managing minority institution have a right to admit the students from its own community subject to sealing of 50% as long as inter se merits of such students is not compromised. Reference was made to a decision of Division Bench of this Court dated December, 2001 passed in Special Civil Application No. 12124/2000 and connected matters wherein the Bench considering a similar question

passed following order :

"As a result of the detailed discussion aforesaid, the petitions partly succeed with the following directions :-

(1) The respondents are within their powers and rights in directing the petitioner Minority Educational Institutions to fill 50% of their seats from general students strictly on merit and on the basis of the Centralisd Admission List sent to them by the Council.

(2) In granting admission to 50% seats to be filled from general students on merit, the respondents representing the State of Gujarat and the Council shall not restrain the petitioner minority institutions from adopting norm of fixing percentage higher than 50% in qualifying examination and adopting mode of selection by interview but marks for the interview shall not exceed 15% of total marks, so as to make the process of admission more objective.

(3) The arrangement made by us above shall continue for the Current academic session for which this Court has already passed an interim order on 05-07-2001 and thereafter which is made absolute. For subsequent academic sessions, the directions made by tis Court above shall be followed in granting admission to 50% of seats to be filled from general students on merit. This arrangement and the mode of admission shall continue until otherwise directed by the Larger Bench of the Supreme Court and subject to its final verdict.

(4) We further direct that the petitioners intake capacity of 40 of the current academic session 2001-02 shall not be disturbed. For the subsequent academic sessions if respondents propose to change the intake capacity of Minority Institutions, the same shall be done only after grant of due opportunity to them of

placing their point of view and decision be taken after hearing them on the said question and without prejudice to their right in law to agitate the question in appropriate forum."

7. From the above reproduction of the portion of the order it can be seen that the Division Bench of this Court upheld the formula of 50% admissions to be granted from members of minority community in a minority educational institution and remaining 50% seats be filled up from general students strictly on merits and on the basis of centralized admission list. The Bench also clarified that this arrangement shall continue unless otherwise directed by the Larger Bench of the Supreme Court and subject to its final verdict.

8. It is also pointed out that subsequently Apex Court in the case of **T.M.A. Pai Foundation v. State of Karnataka** reported in AIR 2003 Supreme Court 355, considered this issue of right of a minority institution to grant preferential admissions to its own students along with various other questions connected with educational institution. My attention is drawn to the observations of the Apex Court in paragraph 149 of the judgement wherein the Apex Court observed that although the right to administer includes with it a right to grant admission to students of their choice under Article 30(1), when such a minority institution

is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the rights of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the State not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution, by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated.

In paragraph 151, the Apex Court further observed that the right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the St. Stephen's College case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the State may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50%

in any case.

In paragraph 152, it was further observed that the at the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible minority applicants and passage of common entrance test by the candidates.

Ultimately, in paragraph 162 of the judgement, the Apex court made following observations :

“A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Art.30(1) are not substantially impaired and further the citizens' rights under Art.29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other facts like educational needs. The concerned State Government has to notify the percentage of the

non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally, be on the basis of the common entrance test held by the State agency followed by counselling wherever it exits."

9. It can thus be seen that Division Bench of this Court in the above decision dated December, 2001 though provided for a formula of 50% allocation of quota to the minority educational institution for its own students also, provided that same shall operate till any further directions may be given by the Larger Bench of Supreme Court. In turn in **T.M.A. Pai Foundation v. State of Karnataka**(supra), Apex Court permitted the State Government to fix quota depending on peculiar facts and circumstances arising.

10. To a query raised by this Court, learned AGP Shri Mengdey submitted that as of now State Government has not completed such a task nor laid down any fixed quota for general or particular cases. Under the circumstance, the formula provided by the Division Bench in the said decision dated December, 2001 would continue to hold the field. This position would continue qua the petitioners also at-least till

the State Government lays down the policy guidelines as permitted by the Apex Court in the case of **T.M.A. Pai Foundation v. State of Karnataka**(supra). Safeguards provided by this Court in its interim order dated 2/9/1999 being in tune with the observations of Apex Court in the case of **T.M.A. Pai Foundation v. State of Karnataka** (supra) and fair play would continue to operate even after disposal of this petition.

11. In the result, the petition is disposed of by giving following directions :

1) It will be open for the petitioners to fill up the seats in the ITI Courses and other Courses offered by the educational institution managed by it in the following manner :

i) Upto a maximum of 50% seats will be filled up by the students belonging to the minority community for which the petitioner no.1-trust is created, strictly according to inter se merits of such students.

ii) Remaining seats will be filled up from General category students on the basis of Common Entrance Test that may be prepared by the Commissioner or on the basis of any fresh process that may be evolved hereafter by the Government.

iii) Every year upon completion of admission process, the petitioners shall submit full list of minority students admitted by it, details of marks obtained by them and such other or further materials that respondents may call upon the petitioners to supply.

iv) This arrangement shall continue till the State Government comes up with fresh policy guidelines as observed here-in-above.

12. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi,J.)

(raghu)